IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1183 OF 2001

IN

MISC.PETITION NO.70 OF 1999

IN

PETITION NO.915 OF 1982

...

Ramesh Nivrutti Bhagwat ...Appellant

v/s.

Dr.Surendra Manohar Parakhe ...Respondent

...

Mr.A.A.Garge for the Appellant.

None for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. By this Appeal, the Appellant challenges the order dated 1st March, 2001 passed in Misc.Petition No.70 of 1999. That petition was filed by the Petitioner for revocation of the Letters of Administration granted in favour of the Respondent by order dated 24-11-1994. The petition for revocation was filed on 21-7-1999. The learned single Judge relying on the judgment of the Division Bench of this Court in Appeal No.937 of 1997 in Misc.Petition No.24 of 1997 in Testamentary Petition No.211 of 1959, (Rohini Damji Sipra v/s. Mrs.Freny Damji Sipra and anr.) held that to an application filed for revocation of Letters of Administration, Article 137 of the Limitation Act 1963 applies and therefore application for revocation has to be made within a period of three years from the date of grant of Letters of Administration. The learned single Judge has also held that even assuming that the period during which the Appellant was prosecuting his Notice of Motion taken out for the same relief is to be excluded, that Notice of Motion was taken out on

29-3-1997 and it was disposed of on 1-4-1998, and whereas the present Petition was filed on 21-7-1999, therefore, the Petition cannot be said to be within the period of limitation.

2. The learned Counsel appearing for the Appellant relies on the judgment of the Calcutta High Court in the case of Durga Pada Bera v/s. Atul Chandra Bera, (1938) Indian Law Reports 76. It appears that, that judgment was rendered by the court when the Indian Limitation Act 1963 was not in force and from that judgment it does not appear that the provisions of the Limitation Act, they may have been in force at that time, have been taken into consideration. Provision of Section 3 of the Limitation Act, 1963 makes the position absolutely clear that when any application is required to be submitted in court, the court is under a duty to dismiss the application even though the limitation has not been set up as a defence unless it is shown that it has been filed within the period laid down by the Act.

3. In our opinion, therefore, as the Indian Succession Act does not lay down any period for making application in court for revocation of the

Letters of Administration, that application will have to be made within a period of three years from the date of grant of Letters of Administration. No doubt, to such an application the provisions of Section 5 of the Limitation Act would be applicable, but for that purpose the applicant has to take out a motion or application for condonation of delay. Admittedly, no such application or motion was taken out by the Appellant. Therefore, we find no fault with the order of the learned single Judge holding that the application for revocation of Letters of Administration filed by the Appellant is barred by the law of Limitation. Appeal is, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)